

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: Methyl Tertiary Butyl Ether ("MTBE")
Products Liability Litigation

MDL No. 1358
Master File C.A. No.
1:00-1898 (SAS)

This document relates to the following case:

Orange County Water District v. Unocal, et al., 04 Civ. 4968

**EXXON MOBIL CORPORATION AND EXXONMOBIL OIL CORPORATION'S
MOTION TO STRIKE PORTIONS OF THE JULY 25, 2011 DECLARATION OF ROY
HERNDON IN SUPPORT OF ORANGE COUNTY WATER DISTRICT'S RESPONSE
TO ORDER TO SHOW CAUSE RE SUMMARY JUDGMENT**

Pursuant to FRCP 56(c)(4) and Federal Rules of Evidence 401 and 402, Exxon Mobil Corporation and ExxonMobil Oil Corporation (“the ExxonMobil defendants”) hereby move to strike those portions of the July 25, 2011 Declaration of Roy Herndon that reference former Mobil station #18-HDR, located at 3195 Harbor Boulevard, Costa Mesa, CA.¹

The grounds for this Motion are that Orange County Water District’s (the “District”) Motion for Summary Judgment addresses fourteen sites, and former Mobil station #18-HDR is not one of them. *See* The District’s Motion for Summary Judgment, Statement of Undisputed Material Facts, pp. 8-11; *see also* July 25, 2011 Herndon Declaration, ¶ 1. Therefore, Mr. Herndon’s repeated references to former Mobil station #18-HDR—including references to current or future work and costs related to the station—are irrelevant to this Court’s Order to Show Cause and should be stricken. *See* Fed. R. Civ. P. 56(c)(4) (“An affidavit or declaration used to support or oppose a motion must . . . set out facts that would be admissible in evidence . . .”); Fed. R. Evid. 401, 402 (“Evidence which is not relevant is not admissible”); *Jewell-Rung Agency, Inc. v. The Haddad Organization, Ltd.*, 814 F. Supp. 337, 339 (S.D.N.Y. 1993) (striking portions of Rule 56 affidavit).

Specifically, the ExxonMobil defendants move to strike the following:

- Paragraph 2, last sentence: “With respect to at least two of the fourteen stations (. . . Mobil #18-HDR), I expect this to occur within the next six months.”
- Paragraph 17 in its entirety.
- Paragraph 18 in its entirety.

¹ The ExxonMobil defendants join the Motion to Strike filed by all defendants.

For the foregoing reasons, the ExxonMobil defendants respectfully request that the Court strike the above-cited irrelevant and inadmissible portions of Mr. Herndon's July 25, 2011 Declaration.

DATED: August 8, 2011

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